IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 751 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRUTBHAI D RAVAL

Versus

STATE OF GUJARAT

Appearance:

MR H.S.MULIA for MR RC JANI for Appellant

MR A.M.BUKHARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 12/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal arises of the judgment and order dated 11th June, 1993, passed by the learned Additional Sessions Judge, Mehsana, in Sessions Case No. 20/93. The appellant before this court is the accused who has been convicted for offence punishable under section 302 IPC and has been sentenced with life imprisonment. Feeling aggrieved, the appellant has preferred the present appeal.

The appellant-accused is charged for committing murder of one Menaben wife of Bijalbhai Malabhai Raval, resident of village Jamla, District-Mehsana. It was alleged that on 26th September, 1992, at around 8-15 at night, the accused believing that his wife was given shelter by the deceased Menaben, picked up a quarrel with her and hit her on the head with a log of wood. The said Menaben succumbed to the injury on the next day i.e. 27th September, 1992. The appellant-accused was thus alleged to have committed offence punishable under section 302 IPC.

The prosecution has examined one Dr. Dipakbhai Jayantilal Thakar (PW-1) to prove the medical certificate (Ex-18) and the injury sustained by Joitiben the wife of the accused. The prosecution has examined Dr. Somabhai Patel (PW-2) who had given the treatment to the deceased Menaben on the date of the offence. He has stated that the deceased Menaben was hit by a hard and blunt substance on the head. The prosecution has also examined Dr. Gaurangbhai Govindbhai Kothari (PW-6) to prove the Postmortem Note (Ex-29). He has certified that the deceased Menaben suffered injury on her forehead 6 cm long antero posterior direction and an abrasion and a bruise on the left knee. He has also certified that the left parietal bone suffered a fracture. The brain was disfigured and depressed on frontal region. Both frontal lobes were lacerated and hemorrhage was present all over the brain and some subdural hemorrhage was present on occipital region. The prosecution has examined the eye witnesses Bijalbhai Malabhai (PW-5), Natubhai Bijalbhai (PW-7) and Baldevbhai Chhanabhai (PW-8). Bijalbhai Malabhai (PW-5) is the husband of the deceased Menaben and has stated that at around 8-30 at night on the date of the incidence while he and his son were sitting in his courtyard, his wife Menaben and daughter Sajjanben were in the house, the accused had approached, he was armed with a log of wood (Aadu). He believed that the deceased Menaben had given shelter to his wife Joitiben and asked Menaben to bring Joitiben from her house. When Menaben

informed him that Joitiben was not in her house, he hit Menaben on head with the log of the wood with which he was armed. A doctor was immediately summoned and after giving preliminary treatment, she was removed to the Civil Hospital, Ahmedabad, where she died the next day morning. Natubhai Bijalbhai (PW-7)the son of the deceased has supported the evidence given by Bijalbhai Malabhai (PW-5). The said evidence is also supported by the other eye witness Baldevbhai Chhanabhai (PW-8) who was the neighbour of the deceased Menaben, and who on hearing the shouts of the accused had gone to the house of the deceased to inquire about the matter. The evidence of the eye witnesses is corroborated by the map of the scene of the offence (EX-25). It is also proved by the evidence of Dr. Dipakbhai Thakar (PW-1) that the wife of the accused Joitiben had suffered injury on the forehead which was required to be stitched, which according to the doctor was caused by a hard and blunt substance. The FSL report (EX-17) has proved the presence of blood of group 'AB' on the clothes of the deceased which she had been wearing at the time of the incidence and the dhoti with which the injury on her head was bandaged. The blood on cotton swab by which the blood was collected from the floor at the place of incidence and the bush-shirt worn by her son Natubhai was found to be of group 'B'. The muddamal log of wood (Aadu) was recovered at the instance of the accused from the waste land some 2 Kms. from village Jamla, the same was found to be blood stained. The said muddamal weapon had not been sent for forensic examination.

According to the eye witnesses the accused had hit the deceased once on the forehead. The medical examination reveals injuries not only on the forehead, but also an abrasion and a bruise on left leg below the knee and a bruise on left hand near wrist. These injuries on the leg and the hand caused to the deceased Menaben have not been explained by the prosecution. Further, according to the eye witnesses, it was the deceased alone who was injured and who was bleeding. According to the said evidence, it should be the blood of the deceased alone which should have been found at the place of the incidence and the clothes of the deceased and witness Natubhai who carried her inside the house. However, as recorded hereinabove, the FSL report reveals presence of blood of two different groups i.e. group 'B' and group 'AB' indicating that not only the deceased, but there was one another person who also had suffered injury and whose blood was found at the place of incidence. The presence of such other person or his having received injury has not comeforth in the evidence or even in the

prosecution case. We, therefore, are of the opinion that the prosecution has suppressed the real incidence as it happened. Such suppression by the prosecution shall be fatal to the prosecution and the accused shall get the benefit of doubt. We accordingly give the benefit of doubt to the accused-appellant and acquit him of the charge framed against him.

In view of the above discussion, the appeal is allowed. The conviction of the accused-appellant Amrutbhai Dahyabhai Raval recorded by the court below and the sentence passed upon him are quashed and set aside. The accused-appellant Amrutbhai Dahyabhai, unless is required to be detained in some other case, be released forthwith. Muddamal articles be disposed of as directed by the learned trial Judge. We are informed that at present the appellant-prisoner is in Central Jail, Sabarmati. The learned advocate seeks permission for direct service. Direct service is permitted.

(MS R.M.DOSHIT J)

(A.L.DAVE J)

JOSHI